

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

LANDWORKS CREATIONS, LLC

Plaintiff,

V.

**UNITED STATES FIDELITY &
GUARANTY COMPANY**

Defendant,

C.A. No. 4:05-CV-40072-FDS

**AFFIDAVIT OF JAMES M. PETERS, JR. IN SUPPORT OF USF&G's
OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY**

I, James M. Peters, Jr., on oath depose and state as follows:

1. I am employed at St. Paul Travelers as Vice President in the Bond Claim Department in Hartford, Connecticut. In that position, I have responsibility for the oversight, handling and management of claims arising under surety bonds executed by United States Fidelity and Guaranty Company (“USF&G”) on behalf of Standen Contracting Company, Inc.

2. The facts set forth below are true, accurate and complete, based either upon my personal knowledge or my information and belief, formed after inquiry into these facts. To the extent based upon my information and belief, I believe all facts set forth below are true.

3. I have conducted a thorough search of claim file regarding the above-referenced litigation. I have been unable to locate a copy of “Plaintiff’s First Set of Interrogatories to be Answered By The Defendant, USF&G.”

4. Attached hereto as Exhibit A is a true and complete copy of a letter, with enclosures, dated April 21, 2005 from Carol A. Griffin of St. Paul Travelers' Claim Legal Group

office at 300 Crown Colony Drive in Quincy, Massachusetts to St. Paul Travelers Corporate Litigation office in Hartford, Connecticut.

5. As indicated in the letter, a deputy sheriff from the Norfolk County Sheriff's Office served a summons, verified complaint, and first set of requests for production of documents upon USF&G at Ms. Griffin's office on April 21, 2005 with respect to the present litigation. The letter did not indicate that interrogatories were served at that time. None of the enclosures were interrogatories.

6. Ms. Griffin's letter, with enclosures, was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters.

7. Ms. Griffin's letter, with enclosures, was kept in the course of a regularly conducted business activity.

8. Ms. Griffin's letter, with enclosures, was made in the regular practice of the regularly conducted business activity.

9. I have found no evidence to indicate that "Plaintiff's First Set of Interrogatories to be Answered By The Defendant, USF&G" were served or otherwise delivered to USF&G, until Plaintiff filed a copy as an attachment to the present motion to compel discovery.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of April, 2006.

/s/ James M. Peters, Jr.
James M. Peters, Jr.
United States Fidelity & Guaranty Company

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants (none) on April 3, 2006.

/s/ Eric C. Hipp

Eric C. Hipp

G:\KJO\ST Paul Travelers\Jackson\Landworks\Pleadings\Peters Affidavit Interrogatories.doc



300 CROWN COLONY DRIVE
THIRD FLOOR
QUINCY, MA 02169
TEL: (617) 984-1070
FAX: (617) 984-1069

CAROL A. GRIFFIN
MANAGING COUNSEL - NORTHEAST REGION
CLAIM LEGAL GROUP
TEL: (617) 984-1071

A handwritten signature in black ink, appearing to read 'Carol A. Griffin', written over the typed name and title.

April 21, 2005

VIA OVERNIGHT MAIL

Ramona Nimirowski, Esq.
Corporate Law - 7S1
St. Paul Travelers
One Tower Square
Hartford, CT 06183

CORPORATE LITIGATION
HARTFORD

APR 26 2005

Re: Landworks Creations, LLC
Vs: United States Fidelity And Guaranty Company
Worcester Superior Court, Civil Action No.: 05-0647C

RECEIVED PM

Dear Ms. Nimirowski:

As you may know, this office is St. Paul Travelers' Claim Legal Group for the Northeast Region.

A deputy sheriff from the Norfolk County Sheriff's Office served a summons, verified complaint, and plaintiff's first request for production of documents to the defendant, USF&G in the above-captioned matter on this office on Thursday, April 21, 2005, as official service on United States Fidelity And Guaranty Co. in connection with this matter. Please note that United States Fidelity And Guaranty Co. is a named defendant in this matter. Based upon my brief review of the complaint, it appears that this matter arose out of a surety or bond issued by United States Fidelity And Guaranty Co. In accordance with the guidelines concerning the handling of suits directly involving St. Paul Travelers or its subsidiaries or affiliates, I am forwarding this matter to you, so that you may forward it to the appropriate business unit legal department.

If you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Carol A. Griffin', written over the typed name.

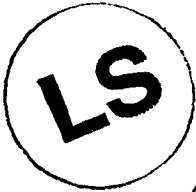
Carol A. Griffin

CAG:sac
Enclosure

cc: Stephen Parnas, Bond Department, St. Paul Travelers (Quincy, MA)

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

CORPORATE LITIGATION
HARTFORDSuperior Court
Department of the Trial Court
of the Commonwealth
Civil Action

APR 26 2005

Landmark Creations, LLC

No.

05-0647 C

RECEIVED PM

Plaintiff (s)

v.

SUMMONS

USF&J

Defendant (s)

* To the above-named Defendant:

You are hereby summoned and required to serve upon *Robert N. Neitzel*, plaintiff's attorney, whose address is *P.O. Box 1459, Framingham, MA 01701*, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the SUPERIOR COURT Department of the Trial Court at WORCESTER either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counter-claim any claim which you may have against the plaintiff which arises out of the transaction of occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Barbara J. Rouse

Witness, *[Signature]* Esquire, at Worcester, the *11th* day of *April* in the year of *our Lord* two thousand and *05*.

[Signature]
Clerk

NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to that particular defendant.

PLEASE CIRCLE TYPE OF ACTION INVOLVED: TORT — MOTOR VEHICLE TORT — CONTRACT — EQUITABLE RELIEF — CH. 93A — MEDICAL MALPRACTICE — OTHER

*

NOTICE TO DEFENDANT: You need not appear personally in court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein AND also file the original in the Clerk's Office, Superior Court, Room 21.

[Signature]
DEPUTY SHERIFF
DATE *4-21-05*

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO:

LANDWORKS CREATIONS, LLC

Plaintiff

v.

UNITED STATES FIDELITY AND
GUARNTY COMPANY

Defendant

VERIFIED COMPLAINT

1. Plaintiff, Landworks Creations, LLC ("the Plaintiff") is a limited liability corporation with a principal place of business at 1500A Lafayette Road in Portsmouth in the State of New Hampshire.
2. Defendant, United States Fidelity & Guaranty Co./St. Paul's Ins. Co ("the Defendant") is an insurance company with a place of business at 124 Grove Street, Franklin, Norfolk County, in the Commonwealth of Massachusetts.
3. The Plaintiff entered into a contract with Standen Contracting Company, Inc. of North Dartmouth, Massachusetts.
4. The Plaintiff agreed to perform certain work for Standen Contracting Company, Inc. at the Shrewsbury Middle School ("the Project")
5. Standen Contracting Company, Inc. was bonded by the Defendant, United States Fidelity & Guaranty Co.
6. Standen Contracting Company, Inc. was unable to complete its work at the Project, and the Defendant, pursuant to its obligations under a performance bond SW5041 assumed

responsibility for completion of the Project in the stead of Standen Contracting Company, Inc.

7. The Plaintiff has performed it work under the Standen contract, and is owed funds by the Defendant for the work performed.
8. The Defendant has failed to pay the Plaintiff for work performed at the Project, to the extent of \$135,101.00.

COUNT I
BREACH OF CONTRACT

9. The Plaintiff restates allegations 1-8 and incorporates them by reference.
10. The Defendant breached its contract by failing to perform its obligations to make payment under the bond between the Defendant and Standen for the benefit of the Plaintiff..
11. As a result of this breach, the Plaintiff has been denied its expectancy and has otherwise been harmed.

COUNT II
VIOLATION OF G.L. c. 93A and 176D

12. The Plaintiff restates allegations 1-11 and incorporates them by reference.
13. Notwithstanding that liability was reasonably clear, the Defendant has declined to make full settlement of the claim, without cause or excuse.
14. The Plaintiff has made demand for its funds, a demand which has been ignored.
15. As a result of this conduct, the Plaintiff has been harmed in its business.

WHEREFORE, the Plaintiff respectfully requests that:

1. this Honorable Court enter judgment against the Defendant as to all Counts;
2. this Honorable Court award the Plaintiff the amount of \$135,101 together with interest and costs, trebled, along with attorney's fees; and
3. this Honorable Court award any further relief as deemed appropriate by this Court.

THE PLAINTIFF DEMANDS A TRIAL BY JURY

Respectfully Submitted,
Landworks Creations, LLC
By its attorney,

Robert N. Meltzer, BBO #564745
PO Box 1459
Framingham, MA 01701
Phone: (508) 872-7116
Telecopier (508) 872-8284

Dated: March 29, 2005

VERIFICATION

I, Neal Matthews, an officer of Landworks Creations, LLC and duly authorized to sign this document on behalf of the corporation, do hereby certify that I have reviewed the attached document, and that the facts contained herein stating the funds owed are true to the best of my knowledge and belief, and represent a true and accurate accounting of the funds due and owing to Landworks Creations, Inc.

Signed under the pains and penalties of perjury this 29th day of March, 2005


Neal Matthews

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO: 05-647C

LANDWORKS CREATIONS, LLC

Plaintiff

v.

UNITED STATES FIDELITY AND
GUARANTY COMPANY

Defendant

PLAINTIFF'S FIRST
REQUEST FOR PRODUCTION
OF DOCUMENTS FROM THE
DEFENDANT, USF & G

Now comes the Plaintiff, Landworks Creations, LLC (“the Plaintiff”) and requests that Defendant, United States Fidelity & Guaranty Co./St. Paul’s Ins. Co (“the Defendant”) provide the following documents pursuant to Mass. R. Civ. P. 34. If any document is deemed by the Defendant to be subject to a privilege of any kind, request is made for the creation and provision of a privilege log, containing specific information sufficient for the Plaintiff to understand the nature of the document, the date of creation of the document, the creator of the document, the recipient of the document and the general subject matter of the document:

Request 1: A complete copy of the USF & G claim file demonstrating the independent investigation by USF & G of the claim made by Landworks against the surety bond on or about March 17, 2005, including, but not limited to correspondence, e-mails, photographs, memoranda, documents received and, documents provided, that formed the basis of USF & G's denial of the Plaintiff's claim for funds owed on the Shrewsbury project referenced in the Plaintiff's Complaint.

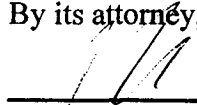
Request 2: A copy of the contract between USF & G and Jackson Construction for the Shrewsbury Project referenced in the Plaintiff's Complaint.

Request 3: Copies of invoices and requisitions tendered by Jackson to USF & G with regard to the Plaintiff's work, and any documents that reference payment, or failure to make payment, to the Plaintiff for its work.

Request 4: Copies of any and all correspondence in the possession of the Defendant between any party or parties that in any way references, evidences, relates to or refers to the Plaintiff's work at the Shrewsbury project, including correspondence to and from Jackson, to and from the Defendant, and to and from the town of Shrewsbury, its agents, employees, construction managers, clerks of the work, servants or assigns.

Request 5: Copies of any and all change orders that in any way relate to the Plaintiff's work at the Project.

Respectfully Submitted,
Landworks Creations, LLC
By its attorney,



Robert N. Meltzer, BBO #564745
PO Box 1459
Framingham, MA 01701
Phone: (508) 872-7116

Dated: April 11, 2005